STATE OF NEW YORK

5903

2025-2026 Regular Sessions

IN ASSEMBLY

February 24, 2025

Introduced by M. of A. JACKSON -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, the family court act and the public health law, in relation to creating an exemption to the presumption that a child born in wedlock is the child of the birth parent's legal spouse and permits certain actions to be taken by the birth parent without notice to the birth parent's legal spouse

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 24 of the domestic relations law, as added by chapter 325 of the laws of 1969 and subdivision 1 as amended by chapter 305 of the laws of 2008, is amended to read as follows:

§ 24. Effect of marriage on legitimacy of children. 1. A child heretofore or hereafter born of parents who prior or subsequent to the birth of such child shall have entered into a civil or religious marriage, or shall have consummated a common-law marriage where such marriage is recognized as valid, in the manner authorized by the law of the place where such marriage takes place, **is a child born in wedlock for the purposes of this section. A child born in wedlock** is the legitimate child of both birth parents notwithstanding that such marriage is void or voidable or has been or shall hereafter be annulled or judicially declared void**; provided, however, that any presumption of legitimacy arising under this subdivision shall be deemed null and void where a birth parent satisfies the procedural requirements under subdivision three of this section**.

2. Nothing herein contained shall be deemed to affect the construction of any will or other instrument executed before the time this act shall take effect or any right or interest in property or right of action vested or accrued before the time this act shall take effect, or to limit the operation of any judicial determination heretofore made containing express provision with respect to the legitimacy, maintenance

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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or custody of any child, or to affect any adoption proceeding heretofore commenced, or limit the effect of any order or orders entered in such adoption proceeding.

3. Nothing contained herein shall be deemed to affect the legitimacy of a child born in wedlock if a birth parent denies that such child is the legitimate child of the birth parent's legal spouse by filing a sworn affidavit in the same manner prescribed by section twenty of this article, in which the birth parent shall declare: (a) the legal spouse is or has a history of being abusive toward the birth parent; and (b) the birth parent and legal spouse: (i) did not plan or intend to have a child together; (ii) are living separately; (iii) have lived separately since prior to the birth of the child; and (iv) are not functioning positively as a family. Any person who shall in any affidavit or statement required or provided for in this section wilfully and falsely swear in regard to any material fact shall be deemed guilty of perjury and on conviction thereof shall be punished as provided by the statutes of this state and such affidavit shall be deemed null and void.

§ 2. Paragraph (i) of subdivision (c) of section 516-a of the family court act, as amended by section 15 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(i) a person other than the signatories is a presumed parent of the child pursuant to **subdivision one of** section twenty-four of the domestic relations law**; unless, at any time, a birth parent's marital status shall have been deemed not to affect the child's legitimacy pursuant to subdivision three of section twenty-four of the domestic relations law, in which case the birth parent shall be deemed to have been the only presumed parent of the child at the time of the signing of the acknowledgement of parentage**;

§ 3. Subparagraph (i) of paragraph (d) of subdivision 1 of section 4135-b of the public health law, as added by section 8 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(i) A person other than the signatories is a presumed parent of the child under **subdivision one of** section twenty-four of the domestic relations law**; unless, at any time, a birth parent's marital status shall have been deemed not to affect the child's legitimacy pursuant to subdivision three of section twenty-four of the domestic relations law, in which case the birth parent shall be deemed to have been the only presumed parent of the child at the time of the signing of the acknowledgement of parentage**;

§ 4. Paragraph (b) of subdivision 1 of section 111 of the domestic relations law, as amended by chapter 918 of the laws of 1985, is amended to read as follows:

(b) Of the parents or surviving parent, whether adult or infant, of a child conceived or born in wedlock; **unless a birth parent's marital status shall have been deemed not to affect the child's legitimacy pursuant to subdivision three of section twenty-four of this chapter, in which case the consent of the birth parent shall be required, and the consent of the birth parent's legal spouse shall be required: (i) for a child placed for adoption more than six months after birth, but only if such legal spouse shall have maintained substantial and continuous or repeated contact with the child as manifested by the standards applicable to consent parents under paragraph (d) of this subdivision; or (ii) for a child who is under the age of six months at the time the child is placed for adoption, but only if such legal spouse shall have manifested a willingness to assume full custody of the child and not merely block**

adoption by others as manifested by the standards applicable under paragraph (e) of this subdivision;

§ 5. Subdivision 1 of section 111-a of the domestic relations law, as amended by chapter 828 of the laws of 2022, is amended to read as follows:

1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b of this article relating to the revocation of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given: (a) in the case of the adoption of a child transferred to the custody and guardianship of an authorized agency, foster parent, or relative pursuant to section three hundred eighty-four-b of the social services law or a child transferred to the custody and guardianship of an authorized agency pursuant to section three hundred eighty-three-c of the social services law; or (b) to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b of this article. In addition to such other requirements as may be applicable to the petition in any proceeding in which notice must be given pursuant to this section, the petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice. **For the avoidance of doubt, notwithstanding any inconsistent provisions of law to the contrary, an affidavit filed by the birth parent pursuant to subdivision three of section twenty-four of this chapter shall be proof satisfactory that the birth parent's legal spouse is not entitled to notice pursuant to this section.** For the purpose of determining persons entitled to notice of adoption proceedings initiated pursuant to this article, persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: (A) rape in first or second degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child.

§ 6. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 567 of the laws of 2015, is amended to read as follows:

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the

provisions of subdivision one-c of this section. **Notwithstanding any inconsistent provisions of law, the court shall not require verification of the status of a child under this section if a birth parent has filed an affidavit pursuant to subdivision three of section twenty-four of this chapter, and such affidavit shall be proof satisfactory that a child is not a "child of marriage" under this section.** Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. Where a proceeding filed pursuant to article ten or ten-A of the family court act is pending at the same time as a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage, the court presiding over the proceeding under article ten or ten-A of the family court act may jointly hear the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of the family court act and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the supreme court; provided however, the court must determine custody or visitation in accordance with the terms of this section.

§ 7. This act shall take effect immediately.